LYE THAI SANG & ANOR.

v.

FABER MERLIN (M) SDN. BHD. & ORS. & ANOTHER CASE

SUPREME COURT, KUALA LUMPUR
ABDUL HAMID OMAR CJ (MALAYA)
WAN SULEIMAN SCJ
GEORGE SEAH SCJ
[CIVIL APPEAL NOS. 79 & 90 OF 1984]
30 AUGUST 1985

CIVIL PROCEDURE: *Section 69(4) of Courts of Judicature Act - Power of Supreme Court to review its earlier decision.*

The applicants applied pursuant to the provisions of r. 70 of the Supreme Court Rules, s. 69 of the Courts of Judicature Act and Article 118(3) of the Federal Constitution for a review of an earlier order or orders made by the Supreme Court.

Held:

[1] Section 69(4) of the Courts of Judicature Act cannot be construed to mean that it confers unlimited power upon the Supreme Court to re-open, re-hear or re-examine, reverse or set aside a judgment given in an appeal already heard and disposed of by it. So to construe would be contrary to the clear meaning of the words used in s. 69 and Article 128(1) of the Federal Constitution.

[2] The jurisdiction of the Supreme Court in regard to civil appeals shall specifically be to hear an appeal from any judgment or order of any High Court. There is certainly no provision which confers jurisdiction on a Supreme Court to hear and determine appeals from a decision given in an appeal it has already heard and disposed of.

[3] Where a final decision has been delivered by the Supreme Court, the appeal is disposed of and is brought to a final conclusion subject only to the Court's power to re-hear the appeal under s. 42(3) or to vary or discharge under s. 44 of the Courts of Judicature Act.

[Application dismissed with costs.]

Legislation referred to:
Court of Judicature Act 1964, ss. 42(3), 44, 69, (3), (4)
Federal Constitution, art. 118(3), 128(3)
Rules of Supreme Court 1980, r. 70

For the applicants - Humphrey Ball (Arthur Lee and Gary Yuen with him); M/s Arthur Lee & Co. (in both appeals)
For the respondents - Sri Ram; M/s Sri Ram, Zulkifly & Kumar (in 1st appeal), S. Balarajah; M/s Balarajah & Co. (in 2nd appeal)

JUDGMENT

Abdul Hamid Omar CJ (Malaya):

Lye Thai Sang and Leong Kum Weng, the respondents in Supreme Court Civil Appeals Nos. 79/84 and 90/84, in respect of which the Court on 18 May 1985 allowed the appeals with costs, applied by way of motion for an order or orders that the judgment given in the said appeals be reviewed.

Mr. Humphrey Ball appearing on behalf of the applicants submitted that these applications were made pursuant to r. 70 of the Supreme Court Rules. Rule 70 of the Supreme Court Rules relates only to form of application. Under this rule, all applications to the Court shall, unless otherwise provided, be made by motion.

He also submitted that, in the light of s. 69 of the Courts of Judicature Act 1964 read together with Article 118(3) of the Federal Constitution, the Supreme Court has unlimited power to review its decision.

Basically the applicants are invoking the provisions of the Courts of Judicature Act 1964, (hereafter called the Act), in particular sub-section (3) and (4) of s. 69 of the Act, to support their argument that this Court has such a power. For easy reference, the whole of s. 69 is reproduced as follows:

> 69 (1) Appeals to the Supreme Court shall be by way of re-hearing, and in relation to such appeals the Supreme Court shall have all the powers and duties, as to amendment or otherwise, of the High Court, together with full discretionary power to receive further evidence by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner.
>
> (2) The further evidence may be given without leave on interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought.
>
> (3) Upon appeals from a judgment, after trial or hearing of any cause or matter upon the merits, the further evidence, save as to matters subsequent as aforesaid, shall be admitted on special grounds only, and not without leave of the Supreme Court.
>
> (4) The Supreme Court may draw inference of fact, and give any judgment, and make any order which ought to have been given or made, and make such further or other orders as the case requires.
>
> (5) The powers aforesaid may be exercised notwithstanding that the notice of appeal relates only to part of the decision, and the powers may also be exercised in favour of all or any of the respondents or parties, although the respondents or parties have not appealed from or complained of the decision.

Section 69 is one of the sections dealing with appeals. Other relevant provisions are ss. 50 to 66 in respect of the Supreme Court's appellate jurisdiction in criminal appeals and ss. 67 to 73 in respect of civil appeals. As can be seen, even from the marginal note to s. 69, it is abundantly clear that the object of sub-section (1) of this section is to vest the Supreme Court with certain powers and duties exercisable in relation to and during the course of hearing of appeals before it. One of the powers is a discretionary power to receive further evidence. It is also abundantly clear that the purpose of sub-sections (2) and (3) of s. 69 is to regulate the applications for and the admission or receipt of further evidence in respect of an appeal properly before the Court.

Consequently, sub-section (4) of s. 69 of the Act confers power upon the Supreme Court (a) generally to draw inferences of fact from the evidence appearing in the record of appeal, and (b) specifically to draw inferences of fact on new or further evidence admitted pursuant to sub-sections (2) and (3) of s. 69 and give any judgment and/or make any order which ought to have been given or made by the High Court.

The question before the Court is, therefore, whether sub-section (4) can be construed to confer an unlimited power on the Supreme Court to review, meaning to re-open, re-examine and re-consider with a view to correction, variation, alteration or reversal, if necessary, an earlier decision in an appeal that has already been heard and disposed of.

Our view is that there is no merit in the contention made by the applicants. Sub-section (4) of the Act cannot be construed to mean that it confers unlimited power upon the Supreme Court to re-open, re-hear or re-examine, if necessary, to reverse or set aside a judgment given in an appeal already heard and disposed of by it. So to construe would indeed not only be contrary to the clear meaning to the words used in s. 69 but also contrary to Article 128(1) of the Federal Constitution.

Article 128(3) states that "the jurisdiction of the Supreme Court to determine appeals from a High Court or a Judge thereof shall be such as may be provided by federal law."

The Courts of Judicature Act 1964, is such a law made pursuant to Clause (3) of Article 128.

With respect to appeals, s. 41 of the Act provides that appeals shall be decided in accordance with the opinion of the majority of Judges composing the Court. Read in the light of s. 67(1), the jurisdiction of the Supreme Court in regard to civil appeals shall specifically be to hear an appeal from any judgment or order of any High Court. There is certainly no provision which confers jurisdiction on a Supreme Court to hear and determine appeals from a decision given in an appeal it has already heard and disposed of.

Where, therefore, a final decision has been delivered, an appeal is in effect heard and disposed of. In other words, it is brought to a final conclusion. And that being the case, the Supreme Court has no power to re-open, re-hear and re-examine its decision for whatever purpose. The only exception where there can be a re-hearing is only to the extent provided by s. 42, in particular sub-section (3) of s. 42. The other exception is as provided under s. 44 sub-section (3) to the effect that every order such as that envisaged in sub-section (1) of s. 44 may be discharged or varied by the full Court.

For reasons we have stated, this application is accordingly dismissed with costs.

Also found at [1985] 2 CLJ 423